

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

Richard Kreiner,

Plaintiff,

Case No. 20-11238

v.

Judith E. Levy

United States District Judge

Michael Thomas,

Mag. Judge Anthony P. Patti

Defendant.

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**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S  
MOTION FOR LEAVE TO AMEND CAPTION [49]**

Before the Court is Plaintiff's renewed motion for "leave to amend the caption to reflect the death of Plaintiff Richard Kr[ei]ner by adding Taylor West as the Personal Representative of the Estate of Richard Kr[ei]ner pursuant to [Federal Rule of Civil Procedure] 25 (a)."<sup>1</sup> (ECF No. 49, PageID.762.) Except for the caption and the first sentence, the current motion is identical to the previous motion submitted by Plaintiff's

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<sup>1</sup> The motion incorrectly identifies Plaintiff as "Taylor West, as Personal Representative of The Estate of Richard Kreiner, Deceased." (ECF No. 49, PageID.762.) But West has not been properly substituted under Rule 25(a) and is therefore not yet the Plaintiff in this action.

counsel. (*Compare* ECF No. 49 *with* ECF No. 46.) Moreover, the present motion fails to address any of the deficiencies identified in the Court’s prior Order. (*See* ECF No. 48, PageID.759–760.)

Accordingly, the motion (ECF No. 49) is DENIED WITHOUT PREJUDICE for the reasons set forth in the Court’s prior Order. (ECF No. 48.) Plaintiff’s counsel must file a ***motion for substitution*** pursuant to Rule 25(a) on or before **Friday, May 17, 2024**. The motion must:

- Address whether Plaintiff’s § 1983 claim survives his death under Michigan law, *see Jackson v. City of Cleveland*, 925 F.3d 793, 811 (6th Cir. 2019) (stating that “§ 1983 claims are subject to the forum state’s survival rules for personal injury actions”);
- Explain how counsel has satisfied the service requirements under Federal Rule of Civil Procedure 25(a)(3); and
- Include a declaration, affidavit, or engagement letter demonstrating that Taylor West, personal representative of Plaintiff’s estate, has retained Plaintiff’s counsel to pursue any surviving interest Plaintiff’s estate retains in this action.

Failure to comply with these instructions may result in sanctions.

IT IS SO ORDERED.

Dated: April 29, 2024  
Ann Arbor, Michigan

s/Judith E. Levy  
JUDITH E. LEVY  
United States District Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on April 29, 2024.

s/William Barkholz  
WILLIAM BARKHOLZ  
Case Manager